



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

November 8, 1995

Mr. Leonard W. Peck, Jr.  
Assistant General Counsel  
Legal Affairs Division  
Texas Department of Criminal Justice  
P.O. Box 99  
Huntsville, Texas 77342-0099

OR95-1201

Dear Mr. Peck:

The Texas Department of Criminal Justice (the "department") received two separate requests for information concerning an accident that caused the death of an individual. You have asked whether the requested information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned IDs# 29679 and 36208.

You indicate that the department has already released some of the information. As to the other information requested, you contend that it is excepted from disclosure pursuant to section 552.103(a).

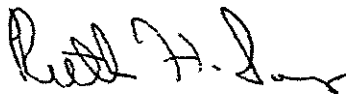
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. This office was provided a petition and other information showing that the department is a party to pending litigation. Our review of the records at issue shows that these records are related to the subject of the litigation. Since the department has shown the applicability of section 552.103(a), the records at issue may be withheld from disclosure.

In reaching this conclusion, we assume that the other parties to the litigation have not previously had access to these records. Absent special circumstances, once information has been obtained by all parties to the litigation, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2. If the other parties in the pending litigation

have seen or had access to any of the information in these records, there would be no justification for now withholding that information from disclosure pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the department's discretion to release this information to the requestors. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/rho

Ref.: ID# 36208

Enclosures: Submitted documents

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